

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of Julie Reddick	)	
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Filing Date: September 11, 2020	)	Case No.: FIA-20-0044
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Issued: September 21, 2020

**Decision and Order**

On September 11, 2020, Julie Reddick (Appellant) appealed a determination letter issued by the United States Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2020-00716-F. In that determination, OPI responded to Appellant’s request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004, in which Appellant sought a report referenced in DOE’s FY 2021 budget request to Congress. OPI conducted a search and located no responsive documents. Determination Letter (September 8, 2020). Appellant challenged the adequacy of the search. As explained below, we deny Appellant’s appeal.

**I. Background**

On April 17, 2020, Appellant submitted a FOIA request seeking “the complete report prepared by [DOE] in order to comply with the GAO-IG Act for the DOE FY 2021 Budget Request.” FOIA Request (April 17, 2020). Appellant noted that DOE’s FY 2021 budget request contained some information required by the GAO-IG Act, and that the budget request indicated that “[DOE] maintains detailed information about actions taken or planned in response to GAO and OIG recommendations and is available upon request.” Appeal Exhibit 3.

OPI referred Appellant’s FOIA request to DOE’s Office of the Chief Financial Officer (CFO) to perform a search. A CFO representative prepared a search certification indicating that she performed a search of CFO electronic records, and was unable to locate any records responsive to Appellant’s FOIA request. CFO Search Certification (September 2, 2020).

In its Determination Letter to Appellant, OPI indicated that CFO had performed a search, but was unable to locate records responsive to Appellant’s FOIA request. Determination Letter at 1. On September 11, 2020, the Office of Hearings and Appeals (OHA) received Appellant’s appeal. Appellant alleged that OPI failed to perform an adequate search for responsive records. Appeal at 1. *Id.* In support of this assertion, Appellant noted that DOE’s FY 2021 budget request indicated that the requested report existed and that DOE was required to prepare the information likely contained in the report by the GAO-IG Act. *Id.* at 1–2.

A representative of OHA contacted CFO for additional information concerning the search performed. A representative of CFO explained that CFO had prepared the portion of DOE's budget request cited by Appellant, and that it intended to communicate that CFO possessed data concerning actions taken or planned in response to GAO and OIG recommendations which could be compiled into a report if a member of Congress so requested. Memorandum of Telephone Conversation (September 17, 2020). However, CFO had not compiled the data in anticipation of such a request. *Id.*

The CFO representative indicated that the data referenced in the budget request was stored in a database. *Id.* CFO reviewed the standard reporting functions of the database to determine whether CFO could export the relevant data into a responsive report. *Id.* However, CFO determined that the existing reports could not export data into a responsive record. *Id.* Therefore, CFO concluded that a record responsive to Appellant's FOIA request did not exist.

## II. Analysis

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, so long as those records are not exempt from disclosure. 5 U.S.C. §§ 552(a)(3)(A), (b). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of "all systems 'that are likely to turn up the information requested.'" *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (quoting *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The reasonableness of a search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017) (citing *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

A lack of responsive records does not necessarily indicate that a search was unreasonable. Indeed, a search's adequacy is "determined not by the fruits of the search, but by the appropriateness of [its] methods." *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., American Oversight*, OHA Case No. FIA-19-0010 (2019).

In the present case, CFO identified the location of the data referenced in DOE's FY 2021 budget request and Appellant's FOIA request. However, that data is not organized as a "report" as Appellant requested. In order to provide Appellant with a report, CFO would need to manipulate the data in the database into a new record. However, "[i]t is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request." *Yeager v. DEA*, 678 F.2d 315, 321 (D.C. Cir. 1982) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161–62 (1975)).

CFO determined that the report requested by Appellant did not exist, the data contained in the database could not be exported into a responsive report, and compiling the data in the database would constitute the creation of a new record. As explained above, CFO is not required to create a new record to satisfy Appellant's FOIA request. *Id.* Accordingly, we conclude that the search

was reasonably calculated to uncover the record requested by Appellant, and that the search was therefore adequate.

### **III. Order**

It is hereby ordered that the appeal filed by Julie Reddick on September 11, 2020, No. FIA-20-0044, is denied.

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services  
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